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Churchland *v.* Gore Mutual Insurance Co., [2003] 1 S.C.R. 445, 2003 SCC 26

Gore Mutual Insurance Company *Appellant*

v.

Jim Christopher Churchland and Maria Magoloina Szalontai *Respondents*

Indexed as: Churchland *v.* Gore Mutual Insurance Co.

Neutral citation: 2003 SCC 26.

File No.: 28821.

2003: February 18; 2003: May 1.

Present: McLachlin C.J. and Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel and Deschamps JJ.

on appeal from the court of appeal for british columbia

Insurance — Multi-peril policy — Limitation period — Insureds claiming for theft under multi-peril homeowners' insurance policy — Part 6 (Fire Provisions) of British Columbia Insurance Act providing shorter limitation period than Part 2 (General Provisions) — Which part of Insurance Act, and by extension, which limitation period applicable? — Insurance Act, R.S.B.C. 1979, c. 200, Part 2, Part 6.

The insureds' residence was broken into and property was stolen. More than one year after the break-in, but less than one year after filing an amended proof of loss, the insureds brought an action against their insurer based on their multi-peril homeowners' insurance policy. The insurer took the position that the claim was statute-barred because it was not brought within the limitation period of one year from when the loss occurred as was prescribed for Fire Insurance under Part 6 (now Part 5) of the B.C. *Insurance Act*. The B.C. Supreme Court allowed the insurer's motion for dismissal of the claim. The Court of Appeal set aside that decision.

Held: The appeal should be dismissed. The limitation period in Part 2 is applicable and the insureds' claim is not statute-barred.

For the reasons set out in *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada*, [2003] 1 S.C.R. 433, 2003 SCC 25, the assumption in the B.C. *Insurance Act* that all insurance policies can be neatly classified and divided into categories based on their exclusive or primary subject-matter is no longer tenable. Given the interpretive gymnastics required to analyse a multi-peril policy under the provisions of Part 6 and the impractical consequences of applying Part 6 to comprehensive policies, such policies should be viewed as falling under the general provisions of Part 2. It would be highly salutary for the Legislature to amend the Act and to provide specifically for such policies. Section 4(a) (now s. 3(a)) of the *Insurance Act* precludes an insurer from contractually incorporating a shorter limitation period.

Cases Cited

Followed: *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada*, [2003] 1 S.C.R. 433, 2003 SCC 25.

Statutes and Regulations Cited

Insurance Act, R.S.B.C. 1979, c. 200, ss. 4(a), 24(1), 213, statutory condition 14.

Insurance Act, R.S.B.C. 1996, c. 226, s. 3(a).

Insurance Classes Regulation, B.C. Reg. 337/90.

APPEAL from a judgment of the British Columbia Court of Appeal (2001), 202 D.L.R. (4th) 210, [2001] 9 W.W.R. 496, 92 B.C.L.R. (3d) 1, [2001] I.L.R. ¶I-4008, 156 B.C.A.C. 67, [2001] B.C.J. No. 1518 (QL), 2001 BCCA 470, setting aside a decision of the British Columbia Supreme Court. Appeal dismissed.

Eric A. Dolden and *Barbara Murray*, for the appellant.

Barbara Cornish, for the respondents.

The judgment of the Court was delivered by

1 THE CHIEF JUSTICE — The respondents' residence was broken into on December 16, 1991, and property was stolen. More than one year after the break-in, but less than one year after filing an amended proof of loss, the respondents brought an action against their insurer based on their homeowners' insurance policy, which covered 14 enumerated perils, including theft. The insurer took the position that the claim was statute-barred because it was not brought within the limitation period of one year from the loss occurred prescribed for Fire Insurance under Part 6 (now Part 5) of the British Columbia *Insurance Act*, R.S.B.C. 1979, c. 200. The summary trial judge dismissed the respondents' action. The Court of Appeal allowed the appeal from that decision: (2001), 92 B.C.L.R. (3d) 1, 2001 BCCA 470.

2 More than 10 years later, the issue is still unresolved. It comes before us together with *KP Pacific Holdings Ltd. v. Guardian Insurance Co. of Canada*, [2003] 1 S.C.R. 433, 2003 SCC 25. Although the relevant provisions in the 1979 Act are numbered differently than those in the 1996 Act, their wording is practically the same:

PART 2

4. This Part has effect, notwithstanding any law or contract to the contrary, except that

(a) where any section or statutory condition contained in Part 4, 5, 6, 7 or 8 is applicable and deals with a subject matter that is the same as or similar to any subject matter dealt with by this Part, this Part does not apply . . . .

24. (1) Every action on a contract shall be commenced within one year after the furnishing of reasonably sufficient proof of a loss or claim under the contract and not after.

PART 6

213. This Part applies to insurers carrying on the business of fire insurance and to contracts of fire insurance, whether or not a contract includes insurance against other risks as well as the risks included in the expression "fire insurance" as defined by this Act, except

(a) contracts of insurance falling within the classes of aircraft, automobile, boiler and machinery, inland transportation, marine, plate glass, sprinkler leakage and theft insurance;

(b) where the subject matter of the contract of insurance is rents, charges or loss of profits;

(c) where the peril of fire is an incidental peril to the coverage provided; or

(d) where the subject matter of the insurance is property that is insured by an insurer or a

group of insurers primarily as a nuclear risk under a policy covering against loss of or damage to the property resulting from nuclear reaction or nuclear radiation and from other perils.

STATUTORY CONDITIONS

14. Every action or proceeding against the insurer for the recovery of any claim under or by virtue of this contract shall be absolutely barred unless commenced within one year next after the loss or damage occurs.

3 As in *KP Pacific*, the outcome of this dispute depends on whether one characterizes the respondents' multi-peril policy as a policy of Fire Insurance under Part 6 of the Act (now Part 5). If it is Fire Insurance, then the shorter limitation period applies. If it is not Fire Insurance, then the policy is governed by Part 2 of the Act, which provides for a longer limitation period.

4 As I set out in more detail in my reasons in *KP Pacific*, the *Insurance Act* is based on the assumption that insurance policies can be neatly classified and divided into categories based on their exclusive or primary subject matter. This assumption is reflected in Regulation 337, which defines fire insurance, theft insurance, business loss insurance, and so on: *Insurance Classes Regulation*, B.C. Reg. 337/90. The basic problem, which cries out for resolution by the Legislature, is that this assumption is no longer tenable. All-risks and multi-peril policies, such as those taken out by the insureds in these cases, are now commonplace. The interpretive gymnastics required to analyse a multi-peril policy under Part 6's provisions and the impractical consequences of applying Part 6 to comprehensive policies lead me to conclude that such policies should be viewed as falling under the general provisions of Part 2.

5 Also for the reasons elaborated in *KP Pacific*, I would find that s. 4(a) of the Act (now R.S.B.C. 1996, c. 226, s. 3(a)) precludes the insurer from contractually incorporating the shorter limitation period.

6 I would dismiss the appeal and direct that the claim proceed to trial. I do not accept the appellant's novel suggestion that the costs of this appeal should be awarded based on the outcome of the trial, since the issues that may arise at trial are unrelated to the limitation question. The respondents shall have their costs throughout.

Appeal dismissed with costs.

Solicitors for the appellant: Dolden Wallace Folick, Vancouver.

Solicitors for the respondents: Thompson & McConnell, White Rock, B.C.